

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4362 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

A S PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for Petitioner
NOTICE SERVED for Respondent No. 1
MR MC BHATT for Respondent No. 2
MR MUKESH R SHAH for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 28/04/2000

ORAL JUDGEMENT

This petition under Article 226 of the Constitution is filed by a Junior Clerk employed by the respondent-Gujarat Secondary Examination Board. The petitioner was employed by the respondent Board as Junior Clerk prior to 1986. On 1.3.1986, the services of the petitioner and other other Clerks were terminated. All such persons including the petitioner, therefore, filed

Special Civil Application No. 1390 of 1986. This Court had granted ad-interim relief in favour of the petitioners of the said petition. The same came to be withdrawn in view of the statement made on behalf of the respondent Board on 6.7.1986 as under :-

"On the statement being made by Mr J.A. Shelat, learned advocate for respondent No. 2 that Rules are to be proposed to the Government suggesting that experienced temporary clerks should also be given weightage in the selection for appointment as and when vacancy arises and as and when employees are required on the post of Seasonal Clerks who were employed on daily wages basis and the petitioners as well as other temporary employees will be considered for such appointments on the basis of their seniority being determined on the total period, which they have put in the Department. Mr. Saiyed seeks permission to withdraw. Permission granted."

In two other matters being Special Civil Application Nos. 3766/84 and 5707/85 also a similar statement was made on behalf of the respondent Board.

2. For making regular appointment to the post of Junior Clerks, the respondent Board considered the existing employees who were employed on daily wages basis as well as other temporary employees and also candidates from the open market. The Board had fixed the following criteria for evaluating the candidates' merit :-

Written Exam - 50 marks

Oral Exam - 50 marks

Marks obtained in SSCE - Total percentage

For performing work - 02 marks (max.10 marks in the Board for 100 days upto 30.11.86 to days be taken into consideration.

On basis of the aforesaid criteria, the Board prepared the select list of 25 candidates. The name of respondent No. 3 was included in the said list. Respondent No. 3 was given 31 marks in the oral

interview whereas the petitioner had obtained only 31 marks. Out of the 25 posts, 3 were meant for persons who knew typing, 3 were reserved for Scheduled Tribe and 2 were for Scheduled Caste, 2 were for Baxi Panch candidates and 1 was for Physically Handicapped and the remaining 14 were for the non-reserved category.

3. In this petition, the petitioner has challenged the select list of the candidates selected at the aforesaid selection process who also came to be appointed as Clerks or Clerk-cum-typists. The petitioner has also prayed for a writ of mandamus to direct the respondents to regularize the services of the petitioner on the post of Junior Clerk as a permanent employee. The petitioner has also challenged the appointment of respondent No. 3.

4. As far as the appointment of respondent No. 3 is concerned, the averments made in the reply affidavit show that the petitioner had obtained less marks than respondent No. 3 and, therefore, no fault can be found with the selection and appointment of respondent No. 3.

5. As far as the challenge to the select list is concerned, none of the persons who were appointed pursuant to the aforesaid select list (except respondent No. 3) have been joined as party respondents. Allowing the petition would amount to disturbing the appointments of all those 24 persons who have been working under the respondent Board for the last about 12 years. The Court is, therefore, not inclined to go into the merits of the challenge to the said appointments.

6. One prayer now remains i.e. for a writ of mandamus to direct the respondents to regularize the petitioner's services.

In the facts and circumstances of the case and particularly in view of the fact that the petitioner has been working as a Junior Clerk under the respondent Board since last more than 14 years and since it is stated in the reply affidavit also that with sympathetic and humanitarian approach the petitioner is continued in service of the Board and the services of the petitioner are not terminated and also considering the fact that as far back as in 1986 also the respondent Board had considered that weightage should be given to the services rendered by an employee under the Board as a daily wager or temporary employee, it would be just and proper to dispose of this petition with liberty to the petitioner to make a representation to respondent No. 2-Chairman, Gujarat Secondary Examination Board to regularize the

petitioner's services on the post of Junior Clerk and with a direction to respondent No. 2 to consider such a representation expeditiously and sympathetically.

7. The petition is accordingly disposed of in terms of the aforesaid directions subject to which Rule is discharged.

April 28, 2000 (M.S. Shah, J.)
sundar/-